HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition Nos.23339, 23340, 23341, 23342, 23343, 23344, 23345, 23346, 23347 and 23348 of 2006

Writ Petition No.23339 of 2006

Between:

K. Nagamalleshwara Reddy and others

... Petitioners

And

The Government of Andhra Pradesh, rep. by its Principal Secretary, Panchayat Raj Dept., Secretariat, Saifabad, Hyderabad and others.

... Respondents

:: ORDER::

Counsel for the Petitioners: Shri S. Ramachandra Rao, Senior Advocate assisted by Shri K.R. Prabhakar

Counsel for the Respondents: Government Pleader for Panchayat Raj

November 17, 2006

-
-

Per G.S. Singhvi, CJ

In these petitions, the petitioners have prayed for grant of a declaration that the action of the respondents in not continuing them as Panchayat Secretaries on contract basis by extending the benefit of order dated 28-9-2006 passed by this Court in Writ Petition Nos.16383 and 20197 of 2006 is arbitrary, illegal, unjust, discriminatory and violative of Articles 14 and 16 of the Constitution. They have further prayed for issue of a mandamus to the respondents to allow them to continue as Panchayat Secretaries on contract basis.

For the sake of convenience, we have taken the facts from Writ Petition No.23339 of 2006.

In furtherance of G.O.Ms.No.44, General Administration (Ser.A) Department, dated 17-2-2003 issued by the State Government for revival of the policy of appointment of wards of government employees seeking retirement on medical invalidation, petitioner – K. Nagamalleshwara Reddy and 16 others were appointed as Panchayat Secretaries on contract basis sometime in 2003. They filed O.A.No.2661 of 2006 before Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') for restraining the respondents from terminating their services by asserting that on account of the suo motu contempt proceedings initiated by the Division Bench of the High Court, the respondents are contemplating to dispense with their services. They also filed an application for interim stay. Initially, the Tribunal passed an order of status quo in regard to the services of the petitioners. In pursuance of that order, the petitioners were allowed to continue in service.

On receipt of notice of the O.A., the respondents filed vacate petition, which was allowed by the Tribunal vide its order dated 1-8-

2006.

Similar orders were passed in other O.As. filed by the Panchayat Secretaries.

Some of the Panchayat Secretaries, who had filed O.A.Nos.2150 and 2393 of 2006 before the Tribunal, challenged order dated 1-8-2006 in Writ Petition Nos.16383 and 20197 of 2006. They pleaded that the decision of the respondents to terminate their services was violative of Articles 14 and 16 of the Constitution and the Tribunal committed a serious error by vacating the order of status quo. They further pleaded that the judgment of the Full Bench of this Court in **Government of Andhra Pradesh v. D. Gopaiah**[1] cannot be made basis for dispensing with their services.

By an order dated 28-9-2006, the Division dismissed both the writ petitions. However, keeping in view the likely disruption of the work of Gram Panchayats, a direction was issued to the respondents to allow the petitioners to continue to work as Panchayat Secretaries for a period of three months and with a further direction that, in the meanwhile, the process of selection for appointment of Panchayat Secretaries shall be completed. The petitioners were also given liberty to apply for recruitment in pursuance of the advertisement issued by the competent authority. For the sake of convenient reference, the concluding paragraph of the order passed in Writ Petition Nos.16383 and 20197 of 2006 together with the directions given by the Court are reproduced below:

> "In view of the above discussion, we hold that the petitioners have failed to make out a case for interference with the order dated 01.08.2006 passed by the Tribunal in V.M.A.No.597 of 2006 in O.A.No.2150 of 2006 and batch and the writ petitions are liable to be dismissed. Ordered accordingly.

However, keeping in view the fact that the State Government has already initiated the process of selection for appointment of Panchayat Secretaries and this process is likely to take some time and sudden vacuum in the posts of Panchayat Secretaries may jeopardize the working of Panchayats, we deem it proper to issue the following directions:

(1) The petitioners shall be allowed to continue to work as Panchayat Secretaries at their respective places for a maximum period of three months by way of stopgap arrangement and, within this time, the competent authority shall complete the process of selection and appoint the selected candidates.

(2) The petitioners may also apply for recruitment as Panchayat Secretaries in pursuance of the advertisement issued by the competent authority. If they were within the age limit at the time of contractual appointment on the post of Panchayat Secretaries, then they shall not be denied consideration on the ground that as on the date of application they have become overage. This would necessarily mean that if the petitioners had already crossed the upper age limit on the date of contractual appointment, then they shall not be entitled to be considered for selection against the advertised posts.

(3) If the petitioners are selected, then they may be appointed by the competent authority against the available vacant posts. For this purpose, the posts held by the petitioners shall also be treated as vacant.

(4) If the petitioners are not selected, then they shall have no right to continue in service and the Tribunal shall not pass any interim order facilitating their continuance in service.

(5) The stopgap arrangement made by this Court shall not create any right whatsoever in favour of the petitioners."

For taking benefit of the above reproduced directions, the petitioners and other similarly situated persons, who were not parties

to Writ Petition Nos.16383 and 20197 of 2006, are said to have represented to the respondents to allow them to continue in service. After sometime, they filed miscellaneous applications in the proceedings pending before the Tribunal and prayed for issue of a direction to the respondents to allow them to continue in service in terms of order dated 28-9-2006 passed in Writ Petition Nos.16383 and 20197 of 2006. At one stage, the cases were heard by a Single Member of the Tribunal, but, later on, they were placed before the Division Bench, which is said to have heard arguments in the original applications on
7-11-2006, but no order was passed on the miscellaneous applications.

Feeling aggrieved by the alleged failure of the Tribunal to direct the respondents to allow them to continue in service, the petitioners filed this petition on 8-11-2006 and prayed as under:

> "12. It is therefore necessary in the interests of justice that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring action of the respondents in not continuing myself and the other petitioners herein as Panchayat Secretaries on contract basis by extending the benefit of the orders of this Hon'ble Court in W.P. No.16383 of 2006, dt.28/9/2006 as arbitrary, illegal, unjust, discriminatory, thereby violative of principles of natural justice while declaring the inaction of the Hon'ble Andhra Pradesh Administrative Tribunal in passing orders in the Miscellaneous Application No.3321 of 2006 in O.A.No.2661 of 2006 as illegal, unjust, arbitrary and discriminatory and issue a consequential direction to the respondents to continue us in our respective places as Panchayat Secretaries on contract basis by extending the benefit of the orders of this Hon'ble Court in W.P.No.16383 of 2006, dt.28/9/2006 and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

On 9-11-2006, the case was adjourned for 10-11-2006 with a direction to the learned Government Pleader to contact the concerned authorities and make a statement whether or not the petitioners were holding the posts of Panchayat Secretaries on 9-10-2006. The order recorded on the proceeding sheet of 9-11-2006 reads as under:

> "Sri S. Ramachandra Rao, Senior Advocate assisted by Sri B. Srinivas for the petitioners.
>
> Government Pleader for Panchayat Raj for the respondents.
>
> Heard learned counsel for the petitioners and perused the record.
>
> In reply to the Court's query, Sri S. Ramachandra Rao, on the basis of the instructions given to him, made a statement that the petitioners were continuing on the post of Panchayat Secretary up to 9-10-2006, i.e. the date on which they filed M.A.No.3321 of 2006 in O.A.No.2661 of 2006.
>
> Notice to respondent Nos.1 and 2 only for 10-11-2006.
>
> Learned Government Pleader for Panchayat Raj accepts notice.
>
> Keeping in view the nature of the case, we deem it proper to call upon learned Government Pleader to find out from the concerned authorities and make a statement before the Court on 10-11-2006 whether or not the writ petitioners were holding the post of Panchayat Secretary as on 9-10-2006.
>
> List the case on 10-11-2006 at Sl.No.1."

On 10-11-2006, the learned Government Pleader produced a statement giving the particulars of the orders passed by the District Collectors of 22 districts for withdrawing the compassionate appointment of the petitioners and others. He also stated that arguments in the main O.As. have been heard and the cases have been fixed for pronouncement of order on 13-11-2006. This statement was contested by the learned counsel for the petitioners.

Therefore, the case was adjourned to 15-11-2006 with a direction to the respondents to file common counter-affidavit within three days. However, the cases could not be taken up on 15-11-2006 because the counter-affidavit was not filed on behalf of the respondents. While adjourning the case, the Court took on record the copies of fax in Memo dated 13-11-2006 sent by Commissioner, PR & RE Department and fax dated 13-11-2006 sent by Collector, Kadapa to Commissioner, PR & RE Department, which were produced by the learned counsel for the petitioners.

In the counter-affidavit, which is shown to have been filed in the Registry on 15-11-2006 and was made available to the Court today, Shri M. Samuel, Principal Secretary to Government, Panchayat Raj and Rural Development Department has averred that the services of the petitioners and other similarly situated persons were terminated by the District Collectors on various dates. He has further averred that District Collectors of all the districts except Karimnagar have completed the selection process and, therefore, the services of the petitioners are no longer required. Paragraphs 3 and 5 of the affidavit of Shri M. Samuel read as under:

> "3. I submit that the services of the petitioners and other similarly placed persons were terminated by orders of the District Collectors of various Districts on the dates and by proceedings given below:

S.No.	Name of the District	Total employees Working on contract	Procgs. No. and Date in which termination orders issued.
1)	Adilabad	93	657/K1/06, Dt.18-9-2006
2)	Ananthapur	39	1134/03/A1 (Pts.), Dt.16-9-06
3)	Chittoor	53	1619/06/A3, Dt.18-9-2006
4)	Cuddapah	54	
5)	East Godavari	16	1621/06/A1, Dt.19-9-2006
6)	Guntur	123	2982/03/04, Dt.18-9-2006

7)	Karimnagar	134	A3/4301/06 (Pts), Dt.21-9-2006
8)	Khammam	29	P5/1534/01, Dt.19-9-2006
9)	Kurnool	32	1300/Pts/A1/2003, dt.15-9-2006
10)	Krishna	41	984/2006/Pts.II, Dt.30-10-2006
11)	Mahabubnagar	99	A2/967/06, Dt.19-9-2006
12)	Medak	25	807/2003/A4 (Pts), dt.20-9-2006
13)	Nalgonda	101	286/03/B1/Pts, Dt.19-9-2006
14)	Nellore	47	1482/2006/A4, Dt.25-9-2006
15)	Nizamabad	36	304/03/B1 Pts, Dt.18-9-2006
16)	Prakasam	74	615/2003/Pts/A2, Dt.31-10-2006
17)	Rangareddy	35	A1/1710/2006, Dt.17-9-2006
18)	Srikakulam	8	616/05/B, Dt.18-9-2006
19)	Visakhapatnam	33	739/2003/A1, Dt.20-9-2006
20)	Vizianagaram	19	3214/01/B, Dt.16-9-2006
21)	Warangal	80	915/03/A3 SDt.16-9-2006
22)	West Godavari	27	21/03/A2(Pts), Dt.16-9-2006
	Total	**1198**	

5. I further submit that the District Collectors of all the Districts except, Karimnagar, have completed the selections of Panchayat Secretaries on contract basis and as this process is completed, there is no need to continue the petitioners and the other similarly placed persons. The details of the appointments of the newly recruited Panchayat Secretaries are given below:

S.No.	Name of the District	No. of vacancies of Panchayat Secretaries	Process Stage	Whether appointment orders issued or not
1)	Adilabad	43	Interview completed	Orders issued
2)	Ananthapur	71	-do-	Orders to be issued
3)	Chittoor	172	-do-	Orders issued on 4-11-2006
4)	Cuddapah	36	-do-	Orders to be issued
5)	East Godavari	99	-do-	Orders to be issued

6)	Guntur	51	-do-	Orders to be issued
7)	Karimnagar	111	Interview not completed	
8)	Khammam	14	Interview completed	Orders issued on 30-10-2006
9)	Kurnool	33	-do-	Orders to be issued
10)	Krishna	98	-do-	Orders to be issued
11)	Mahabubnagar	171	-do-	Orders to be issued
12)	Medak	166	-do-	Orders to be issued
13)	Nalgonda	52	-do-	Orders to be issued
14)	Nellore	121	-do-	Orders issued on 13-11-2006
15)	Nizamabad	57	-do-	Orders issued on 7-11-2006
16)	Prakasam	130	-do-	Orders to be issued
17)	Rangareddy	48	-do-	Orders to be issued
18)	Srikakulam	120	-do-	Orders to be issued
19)	Visakhapatnam	59	-do-	Orders to be issued
20)	Vizianagaram	86	-do-	Orders to be issued
21)	Warangal	118	-do-	Orders issued on 12-10-2006
22)	West Godavari	146	-do-	Orders issued on 6-11-2006
	Total	**2002**		

Shri S. Ramachandra Rao, Senior Advocate with his usual tenacity and vehemence argued that the manner in which the respondents and the Tribunal have conducted themselves leaves much to be desired. According to him, the respondents have deliberately violated order dated 28-9-2006 passed in Writ Petition Nos.16383 and 20197 of 2006 and thereby made themselves liable

to be proceeded against under the Contempt of Courts Act, 1971. He lamented that even though, by virtue of the judgment of the seven Judges Bench of the Supreme Court in **L. Chandra Kumar v. Union of India**[2], the Tribunal is subject to judicial superintendence of the High Court, it has failed to give directions in terms of order dated 28-9-2006 passed by this Court. He then argued that the petitioners of these cases and even those who were parties in Writ Petition Nos.16383 and 20197 of 2006 did not get opportunity to compete for selection because the competent authority did not advertise the posts of Panchayat Secretaries and, therefore, termination of their services would be violative of Articles 14 and 16 of the Constitution.

The learned Government Pleader for Panchayat Raj argued that the petitioners are not entitled to continue on the posts of Panchayat Secretaries because their initial appointments were nullity. He further argued that in view of the judgment of the Full Bench in **Government of Andhra Pradesh v. D. Gopaiah** (supra), none of the petitioners could have been appointed as Panchayat Secretaries. Learned Government Pleader submitted that the petitioners cannot continue in service because the process of selection had been completed. He emphasized that the Panchayat Secretaries appointed on contract basis without facing selection will have to make room for the selected candidates and even those who were petitioners in Writ Petition Nos.16383 and 20197 of 2006 cannot be continued in service. He pointed out that selection process could not be completed in Karimnagar District because of the enforcement of the model code of conduct by the Election Commission of India.

We have given serious thought to the arguments of the learned counsel. In the first blush, the submission of Shri S. Ramachandra Rao that the respondents have acted in disregard of the spirit of order

dated 28-9-2006 passed by this Court in Writ Petition Nos.16383 and 20197 of 2006 appears attractive, but, on a closure scrutiny, we do not find any merit in it. Admittedly, the petitioners were appointed as Panchayat Secretaries on contract basis for a fixed period and they were paid fixed emoluments. Their appointments were not preceded by any selection. Therefore, they did not acquire any right to hold the posts or to continue in service. It is quite surprising that even after the judgment of the Full Bench in **Government of Andhra Pradesh v. D. Gopaiah** (supra), the State Government had audaciously issued G.O.Ms.No.44 dated

17-2-2003 for facilitating appointment of the wards of the employees, who sought retirement on medical invalidation. While dealing with this issue in Writ Petition Nos.16383 and 20197 of 2006, the Division Bench observed:

> "We may add that compassionate appointment of the wards of the employees retired on the ground of Medical Invalidation cannot be equated with the compassionate appointment accorded to the employees dying in harness. In the first category of cases, the employee who retires on Medical Invalidation gets pension. Though, such pension is not equivalent to pension admissible to an employee who retires on superannuation in the normal course, but the amount payable to the employee retiring on Medical Invalidation is by and large sufficient to sustain the family. In the second category of cases, the dependants of the employees are left without any source of sustenance on account of the sudden demise of the breadwinner. Therefore, the theory of protective discrimination and affirmative action, which was evolved to uphold the policies of appointment of the dependants of deceased employees, cannot be invoked to justify the appointments of the wards of the employees seeking retirement on the ground of Medical Invalidation.
>
> We are further of the view that in the face of the law laid down by the Full Bench in **D. Gopaiah**'s **case** (supra), the State Government was thoroughly ill-advised to issue

G.O.Ms.No.44 dated 17.02.2003. A Government which claims to be wedded to the system established by rule of law cannot, in the name of appeasing various pressure groups, take decisions in complete disregard of the law laid down by the highest Court of the State. Therefore, we are prima facie convinced that G.O.Ms.No.44 dated 17.02.2003 is legally and constitutionally unsustainable and the petitioners, who were appointed pursuant to the policy contained in that G.O., cannot seek a declaration that they have acquired a right to hold the post or the right to continue in service indefinitely.

We are also prima facie convinced that on the basis of their contractual appointment for a period of one year, which was extended till further orders vide memo dated 16.06.2004, the petitioners cannot claim the indefeasible right to remain in service. Indeed, it is not even the case of the petitioners that they had been appointed after adopting some process of selection and considering the competing claims of the other eligible persons. Therefore, their initial appointments were clearly violative of Article 16(1) of the Constitution. The Tribunal has kept this aspect in view while vacating the interim orders and we do not see any reason to differ with it."

In view of the above observations, there is no escape from the conclusion that the initial appointments of the petitioners were vitiated due to violation of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution and they cannot continue on that post as of right and they are bound to make room for the selected candidates. The petitioners have not controverted the assertion contained in the affidavit of Shri M. Samuel that selections of Panchayat Secretaries have been completed in all districts except Karimnagar. Therefore, neither they nor the candidates in whose favour order dated 28-9-2006 was passed and who have not been selected pursuant to the advertisement issued by the competent authority can claim a right to be continued in service.

The argument of Shri S. Ramachandra Rao that the petitioners

were not given opportunity to compete for selection is liable to be rejected because the direction contained in order dated 28-9-2006 passed in Writ Petition Nos.16383 and 20197 of 2006 did not envisage issue of fresh advertisement by the competent authority. It was for the petitioners to have applied for recruitment in pursuance of the advertisement already issued by the competent authority and those who did not apply cannot be heard to complain that they were denied opportunity of competition.

No other point has been argued.

In the result, the writ petitions are dismissed.

As a sequel to dismissal of the writ petitions, the miscellaneous applications filed by the petitioners for interim relief are also dismissed.

Before parting with the case, we would like to reiterate that the observations contained in this order shall not influence final adjudication of the original applications which are pending before the Tribunal.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

November 17, 2006

svs

---

[1] 2001 (6) ALT 553

[2] AIR 1997 SC 1125